

HIGH SUMMIT OIL AND GAS, INC.

IBLA 84-810

Decided January 24, 1985

Appeal from a decision of the Casper, Wyoming, District Office, Bureau of Land Management, rejecting in part appellant's application for right-of-way W-86254, and rejecting appellant's application for right-of-way W-81556.

Affirmed.

1. Federal Land Policy and Management Act of 1976: Rights-of-Way -- Rights-of-Way: Applications -- Rights-of-Way: Federal Land Policy and Management Act of 1976

Under the Federal Land Policy and Management Act of 1976, approval of a right-of-way by the Secretary of the Interior is discretionary. A decision of the Bureau of Land Management rejecting an application for a right-of-way will ordinarily be affirmed by this Board when the record shows the decision is based on a reasoned analysis of the factors involved, made with due regard for the public interest.

APPEARANCES: Wendall H. Jamison, Evans, Colorado, for appellant;

Lyle K. Rising, Department Counsel, for Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE STUEBING

High Summit Oil and Gas, Inc. (HSOG), has appealed from a decision of the Casper, Wyoming, District Office, Bureau of Land Management (BLM), dated July 26, 1984, rejecting in part its application for right-of-way W-86254, and rejecting its application for right-of-way W-81556.

HSOG filed right-of-way application W-86254 with the Platte River Resource Area Office, BLM, on April 25, 1984, for an access road to oil and gas lease W-58802 (crossing oil and gas leases C-037009A and C-037009C), located in T. 35 N., R. 85 W., sec. 9, W 1/2 NE 1/4, SE 1/4 NE 1/4, NE 1/4 SE 1/4, and sec. 15, SW 1/4 SW 1/4, SW 1/4 SE 1/4, Sixth Principal Meridian, Natrona County, Wyoming. BLM rejected the new-construction road portions of right-of-way application W-86254. However, BLM found that use of the existing road located in T. 35 N., R. 85 W., sec. 9, W 1/2 NE 1/4, SE 1/4 NE 1/4, NE 1/4 SE 1/4, Sixth Principal Meridian, Natrona County, Wyoming, could be approved subject to execution of certain forms and acceptance of certain stipulations. On August 14, 1984, right-of-way W-86254 was approved for use of the existing access road.

HSOG filed right-of-way amendment application W-81556 with the Platte River Resource Office, BLM, on April 25, 1984, for an access road to oil and gas lease W-58803 (crossing oil and gas lease W-60688 and W-62034) located in T. 35 N., R. 85 W., sec. 9, W 1/2 NE 1/4, SE 1/4 NE 1/4, NE 1/4 SE 1/4, and sec. 15, SW 1/4 SW 1/4, SW 1/4 SE 1/4, Sixth Principal Meridian, Natrona County, Wyoming.

BLM rejected the new-construction road portion of right-of-way application W-86254 and all of amended application W-81556 because they "are in conflict with environmental considerations and with decisions found in the approved Natrona Management Framework Plan relating to right-of-way placement and location, and because the proposals are not in the best public interest." BLM went on to note that:

This decision is without prejudice to continue[d] use of existing roads authorized by rights-of-way and approved Applications for Permit to Drill (APD) which currently provided access via existing upgraded roads to the oil and gas leases and to producing oil and gas wells on those leases. Continued use of rights-of-way W-77745, W-81556, and APD-approved existing access roads can be satisfactorily mitigated and provide for environmentally sound access to and over the oil and gas leases, and is in conformance with the approved Natrona Management Framework Plan decisions relating to rights-of-way and oil and gas lease development.

On July 26, 1984, BLM prepared a thorough land report and environmental assessment (EA) concerning appellant's right-of-way applications (EA No. WY-062-4-062). The report concludes as follows:

There is no need for the proposed action since the applicant now holds rights-of-way and a private land easement which provide access to the oil and gas leases, and wells on the leases, over existing, upgraded roads. Construction of new access roads in lieu of use of existing access roads is not an economic method for obtaining access to the facilities, and would result in unnecessary, additional surface disturbance and impacts to the public lands. Approval of the proposed action is not consistent with BLM planning or policy, and could set adverse precedents relating to rights-of-way alignment, and oil and gas lease development. Construction of new access roads could adversely affect the landowner of private lands over which access roads now cross, as well as potentially placing the general public's health and safety at risk, and would not be in the public interest.

(EA, Decision Record at 1).

The EA provides in part:

The proposal has not been brought to the attention of the general public, however, discussions were conducted with the private landowner, J. B. Eccles. Mr. Eccles expressed surprise that such an application had been made, stating that no new roads should be needed since the easement given to High Summit Oil & Gas, Inc. by himself in May, 1984 provides for the company's perpetual use of the existing roads crossing his private lands, and allows for construction of new facilities, as needed, over those lands. He voluntarily provided this office with a copy of the easement agreement.

Approval of the proposed action would set a precedent adverse to current, long-standing bureau policy regarding promotion of use of existing roads where feasible. In addition to being standard bureau operating procedure, industry has traditionally utilized existing roads, wherever those roads provide adequate access, rather than incur costs for construction and rehabilitation of new roads. Approval of new construction [of] roads [for] the primary purpose of bypassing private lands over which existing roads traverse would open the door for future similar applications, since it may, in some instances, be less time consuming to deal with BLM instead of private landowners.

(EA at 9, paragraph D).

Therefore, as indicated by the EA, appellant already has adequate access and the new rights-of-way are not necessary.

Moreover, BLM found that the proposed rights-of-way would be inconsistent with BLM planning:

The proposed action is not consistent with BLM planning. Natrona Management Framework Plan Objective L-6 states: "Allow use of public land to accommodate rights-of-way considering facility placement adjacent to established routes and maximizing protection of resources or fragile natural systems."; Decision L-6.3 is to "Encourage placement of compatible facilities adjacent to existing facilities adjacent to existing facilities [sic] in outlying areas.", since ". . . placement . . . adjacent to other

facilities is proper and lends to quality land use." The Platte River Resource Area Oil and Gas EA identifies, in the Environmental Consequences section (p72), that the amount of overall soil disturbance resulting from road rights-of-way has been greater than necessary, further stating that more than one access road into a facility contributes to the problems associated with accelerated erosion and site reclamation.

(EA at 9, paragraph E).

BLM's analysis thoroughly assessed the environmental consequences of the proposed rights-of-way:

Construction of approximately 1.5 miles of new access road will result in destruction of the native vegetation and disturbance of soils on approximately 5.3 acres of public and state land, on or off the oil and gas leases. By constructing new roads in the area total area disturbed by roads in Sections 4, 9, 15, 16, and 22, including existing roads that are authorized by right-of-way or NTL-6/APD, will be 40.9 acres. Erosion of soils will occur along the new roads for the life of the facilities, although reseeding of ditch areas should reduce the amount of disturbed area by about one-third.

(EA at 3 (Impacts of the Proposed Action)). BLM also found that the rights-of-way would cause unnecessary soil erosion and stream sedimentation in areas requiring a crossing of the South Fork of the Powder River. The plan for a river crossing submitted by the applicant was also found to be inadequate. The culverts necessary to permit full drainage of water at peak flow would have to be four (4) times the size of the proposed conduits (EA at 4). Those conduits would also cause serious flooding of public and private lands, creating an artificial barrier at peak runoff. BLM concluded that an expensive concrete bridge would be necessary to prevent flooding. In sum, BLM has presented a cogent and well-documented picture of needless environmental

damage in this area if the proposed rights-of-way are granted. It is worth noting that section 302 of the Federal Land Policy and Management Act of 1976 (FLPMA), 43 U.S.C. § 1732(b) (1982), provides in part: "In managing the public lands the Secretary shall, by regulation or otherwise, take any action necessary to prevent unnecessary or undue degradation of the lands."

HSOG asserts on appeal that the grantor of its right-of-way across the private land, J. B. Eccles, 1/ had illegally blocked access over his land for several days, thereby disrupting HSOG's operations. HSOG characterizes its relationship with Eccles as "poor," and regards access by the present route as "unreliable." This, apparently, is the principal reason that HSOG has applied for another route and has pressed this appeal.

The Board regards this as an inadequate reason to grant the requested right-of-way. There seems to be no doubt that appellant has a legal right-of-way over the present route, including the Eccles land. It would seem that it is appellant's responsibility to protect its own private legal entitlements rather than to look to the Federal Government to provide relief from what it views as an unhappy relationship with a private citizen. Moreover, there seems to be no present barrier to appellant's use of the existing route, but merely appellant's anticipation that there may be difficulty in the future.

Appellant's right-of-way applications were filed pursuant to section 501 of FLPMA, 43 U.S.C. § 1761 (1982). Under FLPMA, approval of a

1/ Eccles executed the right-of-way easement in his capacity as president of Eccles Land and Livestock.

right-of-way by the Secretary of the Interior is a "wholly discretionary matter." E.g., Lower Valley Power & Light, Inc., 82 IBLA 216, 223 (1984); William A. Sigman, 66 IBLA 53, 55 (1982); Nelbro Packing Co., 63 IBLA 176, 185 (1982).

In Anita Robinson, 71 IBLA 380, 382-83 (1983), we stated: "A BLM decision rejecting an application for a right-of-way will ordinarily be affirmed by the Board when the record shows the decision to be based on a reasoned analysis of the factors involved, made with due regard for the public interest." William A. Sigman, *supra* at 55; Nelbro Packing Co., *supra* at 185. Therefore, the central issue in the instant appeal is whether or not BLM's decision was premised upon a reasoned analysis of the factors involved, made with due regard for the public interest.

The case of Anita Robinson, *supra*, is instructive in this area. In Robinson, this Board upheld a BLM decision rejecting the applicant's right-of-way application. Robinson applied for a right-of-way for a road to her home. The road would have had a negative impact on the scenery in an area which was being studied for inclusion in the Wild and Scenic Rivers System. This Board's decision upholding the rejection of Robinson's right-of-way was premised on two primary bases. First, Robinson already had adequate access to her home by an existing road. Second, granting the right-of-way would have conflicted with land use plans adopted pursuant to section 202 of FLPMA, 43 U.S.C. § 1712 (1982). The same two circumstances exist in the instant case.

In another analogous case, Department of the Army Corps of Engineers, 51 IBLA 26 (1980), the Board upheld BLM's rejection of the Army's right-of-way application where there was an existing road and the new road would have caused undue erosion and sedimentation of a stream. Under those circumstances, the proposed right-of-way was held not to be in the public interest. Id. at 26. In the instant case, the EA indicated that the new road would similarly cause undue soil erosion and many other associated environmental problems. In Lowell Durham, 40 IBLA 209 (1979), this Board upheld a BLM decision rejecting a right-of-way application where the proposed right-of-way was found to cause soil erosion and sedimentation with a resulting loss of fish habitat.

In deciding whether to approve appellant's proposed rights-of-way, BLM was effectively required to balance the competing interests. We cannot conclude that BLM failed to adequately weigh these interests or that it failed to take relevant factors into account. The Land Report and EA upon which BLM premised its decision was thorough in its treatment of the various considerations. The record clearly reflects that BLM conducted a reasoned analysis with due regard for the public interest. E.g., Anita Robinson, supra at 382-83. Accordingly, we conclude that BLM properly denied appellant's right-of-way applications for the foregoing reasons, and because appellant has not shown a "sufficient reason" to disturb BLM's decision. See Anita Robinson, supra; Stanley S. Leach, 35 IBLA 53, 55 (1978); Jack M. Vaughn, 25 IBLA 303, 304 (1976).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

Edward W. Stuebing
Administrative Judge

We concur:

Wm. Philip Horton
Chief Administrative

Judge Franklin D. Arness
Administrative Judge

